

November 30th, 2015

Mr. Chairman and Members of the Committee,

I am writing to share some of my concerns with the actions of the Montana Department of Justice. To put it clearly, I believe the Department of Justice is working to enforce laws that do not exist, due to a complaint filed by special interests. This complaint has yet to be made public.

The Department of Justice has filed a suit against a small Billings tobacco business without being able to clearly articulate what laws were being broken and how these laws were being broken. It is the role of the Legislative Branch to make the laws. It is not the role of the Department of Justice to file lawsuits against businesses in hopes of using the Judicial Branch to issue rulings against businesses which will allow the Department of Justice to indirectly create new laws.

From my understanding, the Department of Justice believes that the Billings business has broken the intent of the law, and should be considered a tobacco manufacturer due to the business allowing its customers the use of tobacco rolling machines for free. The law is supposed to define what a tobacco manufacturer consists of, yet this business does not fit under the law's definition of tobacco manufacturer. Still the Department of Justice is acting otherwise and will spend the taxpayer dollars of Montanans to bring this issue to court. Ironically, the Department of Justice is supposed to be protecting consumers, when in actuality, it seems to be using its power to protect Big Tobacco.

Montana's Code Annotated, 16-11-307, 16-11-102, subsection 2 (i) and 16-11-402, subsection 9, are the sections of Montana's law that define what a tobacco manufacturer is. The sections are included below. The business does not fit this description.

If the laws in Montana are unclear, it is our job as the legislature to clarify these laws or close loopholes in the upcoming legislative sessions. A great example of some loopholes that created new businesses in Montana were the brewery laws. These brewery laws were never intended to create breweries as they are today, but this is exactly what happened outside of the intent of the law.

Please review the recent actions of the Department of Justice to ensure that the Department's actions are appropriate, to ensure our laws are clearly being enforced, and to ensure the legislature maintains over-site with the enforcement department of Montana's Government.

Thank you.

Representative Daniel Zolnikov
Billings, Montana
House District 45

Sections of Montana Law mentioned above:

16-11-102. Definitions. (1) As used in this chapter, the following definitions apply, unless the context requires otherwise: (i) "Manufacturer" means any person who fabricates tobacco products from raw materials for the purpose of resale.

16-11-402 (9) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(a) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) becomes a successor of an entity described in paragraph (a) or (b). The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs (a) - (c) above.

16-11-307. Distribution of tobacco products in other than sealed packages prohibited -- minimum package size. (1) A person may not distribute a tobacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law. Single cigarettes may not be sold.

(2) A person may not knowingly manufacture or distribute for commercial purposes cigarettes in a package containing fewer than 20 cigarettes or rolling tobacco in a package containing less than 0.6 ounces net weight of tobacco. For purposes of 16-11-308 and this section, "rolling tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.